

SPECIAL PUBLIC NOTICE
Nationwide Permits for Arizona
Nationwide Permit 23, Approved Categorical Exclusions

Nationwide Permit (NWP) 23, Approved Categorical Exclusions, can be used for an activity that is

“...undertaken, assisted, authorized, regulated, funded, or financed, in whole or part, by [a] [f]ederal agency or department where that agency or department has determined...that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment...” (Corps 2002a).

Use of NWP 23 does not require submittal of a NWP preconstruction notification to the U.S. Army Corps of Engineers (Corps). However, as identified below, use of this NWP for a Federal Highway Administration (FHWA)-funded Arizona Department of Transportation (ADOT) transportation project carries several specific documentation and approval requirements.

Applicability and Type of Categorical Exclusion

In order to qualify for use of NWP 23, a FHWA-funded ADOT project must meet FHWA criteria of a Group I or Group II categorical exclusion (CE) as defined in Title 23 Code of Federal Regulations Part 771.115-117.

Use of a NWP 23 will trigger a non-programmatic CE, which will require FHWA review and signature.

Conditions Applicable to Nationwide Permit 23

Nationwide Permit General Conditions

The Corps has determined that five NWP general conditions apply to the use of NWP 23 for a FHWA-funded ADOT project. In lieu of attaching the Corps’ complete list of NWP general conditions to the CE and clearance memo, the following conditions must be addressed in the body of the CE.

Aquatic Life Movements

Determine the nature of the waterway (ephemeral or perennial), and discuss either no impact, or actions to be taken to minimize impacts to aquatic life movements.

Tribal Rights

Determine the presence or absence of tribal waters, treaty fishing, or hunting rights in the project area, and discuss either no impact, or actions to be taken to minimize impacts to tribal rights.

Shellfish Beds

Determine the presence or absence of shellfish populations in the project area, and discuss either no impact, or actions to be taken to minimize impacts to shellfish populations.

Spawning Areas

Determine the presence or absence of spawning areas in the project area, and discuss either no impact, or actions to be taken to minimize impacts to spawning areas.

Construction Period

State the approximate start and stop dates for construction.

Section 401 Water Quality Certification Requirements

Section 401 water quality certification requirements associated with NWP 23 are identified in the second portion of Appendix 3.

Documentation and Approval Process

1. The ADOT Environmental & Enhancement Group (EEG) determines that the project meets the criteria of a Group I or Group II CE, and approves and signs the CE- typically, the CE and clearance memo will include explanatory conditions stating that
 - a. project work will not begin until the NWP 23 is approved by the Corps
 - b. the contractor shall comply with any special conditions identified by the Corps
2. EEG forwards the CE to FHWA with a cover letter that
 - a. explains that use of NWP 23 will be requested from the Corps
 - b. requests FHWA signature of the cover letter and the non-programmatic CE, indicating concurrence with the CE findings
3. EEG forwards the CE and cover letter (signed by FHWA) to the Corps, requesting
 - a. concurrence with the CE findings
 - b. authorization to use NWP 23
4. The Corps solicits public comment on the project-if no objections are raised, the Corps issues authorization to EEG, identifying special conditions required for construction as appropriate
5. EEG updates the clearance memo for the project to include any special conditions identified by the Corps